IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

ST.Rev..No. 239 of 2007

(***TA.220/2006 of KERALA SALES TAX APPELLATE TRIBUNAL, ADDL.BENCH, PALAKKAD)***

REVISION PETITIONER/APPELLANT/ASSESSEE:

M/S. VAYUJA CHEMICALS LTD.,
POYILISSERY, TIRUR-676 102.

BY ADV. SRI.M.M.RADHAKRISHNAN

RESPONDENT/ RESPONDENT/REVENUE:

STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT OF
TAXES DEPARTMENT, THIRUVANANTHAPURAM.

BY SR. GOVERNMENT PLEADER SHRI MUHAMMED RAFIQ.

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 31/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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SALES TAX REVISION. No. 239 OF 2007

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Dated this the 31st July, 2007

O R D E R

H.L. Dattu, C.J.:

Revision Petitioner is a company incorporated under the provisions of the Companies Act. It is engaged in the manufacture and sale of chemicals. It is also registered under the provisions of the Kerala General Sales Tax Act and Central Sales Tax Act.

2. The petitioner is before us in this Revision filed under section 41(1) of the Kerala General Sales Tax Act (hereinafter referred to as 'Act') and Kerala General Sales Tax Rules (hereinafter referred to as 'Rules') inter alia questioning the correctness or otherwise of the orders passed by the Kerala Sales Tax Appellate Tribunal in T.A.No. 220 of 2006 dated 9th November, 2006.

3. The Intelligence Officer, Squad No.II, Palakkad had intercepted a transport vehicle covered by sales invoice number.8 dated 09.07.2002 . After verifying the documents carried by the person in-charge of the vehicle, the intelligence officer was of the opinion that the sale invoice produced by the person in-charge of the vehicle is not as prescribed under Rule 32 (12) of the Rules and thereafter suspecting attempt of evasion of payment of tax by the consignor, had issued notice dated 09.07.2002 . The defects noticed by the intelligence officer at the time of inspection is as under:

"The serial number of the sales invoice accompanied with the

consignment is not in consonance with Rule 32 (12) of the KGST Rules. The bill number should be either printed or machine numbered. Hence bonafides of the document produced and attempt at evasion of tax is suspected."

4. In view of the above defect, the Intelligence Officer had collected a security deposit of Rs.19,635/- and the vehicle along with the goods were released. Thereafter, the intelligence officer had initiated proceedings against the petitioner under section 29A(4) of the Act, by issuing a show cause notice dated 30.09.2003. After receipt of the show cause notice, the petitioner had filed its reply dated nil. The intelligence officer after noticing the defence offered by the dealer/petitioner had proceeded to observe in his order, as under:

"My verification of the document accompanied also confirmed that the serial number of the invoice accompanied is 4 and written as against the requirement of sub rule 12 of Rule 32 . Sub rule 12 of Rule 32 requires any dealer to prepare bill or cash memorandum in duplicate and serially machine numbered, The Director who produced the books of accounts pleaded ignorance. However I do find no reason to hold the argument. Besides the above verification of the books of accounts revealed that the dealer has not maintained authenticated RGI Register (purchased under the Central Excise Act). Moreover sales as per the invoice in this case was also not accounted in cash Book. Considering the circumstances, I am fully convinced that the dealer has failed to establish that the transport in question was done in accordance with the provisions of KGST Act and rules thereunder.

In the circumstances, the following orders are passed:

Order No.VC.II 113/02-03 dated 30/01/04.

I hereby impose a penalty of Rs.19635/- (Rs. Nineteen thousand six hundred and thirty five only) equal to double the amount of tax attempted to be evaded under the powers vested in me u/s. 29A(4) of the KGST Act on the owner of the goods who has attempted to evade payment of tax due on the goods chemicals (Uni Formaldihide Rexin) transported in Lorry No.KL.10-4473 from Tirur to Visakhapattanam valued Rs.71136. The security paid Rs.19635/- as per receipt No.139583 dt. 11.07.2003 is hereby adjusted towards the penalty imposed."

5. The orders passed by the intelligence officer dated 30.01.2004 was the subject matter of the first appeal in Sales Tax Appeal No. 5176 of 2005. The first appellate authority (Deputy Commissioner (Appeals)III, Commercial Taxes, Ernakulam) after considering the submissions made by the assessee's representative before the first appellate authority has rejected the appeal . In the aforesaid order, it is observed as under:

"I had examined the case and perused the records. From the fact and circumstance of the case I am of the view that the appellant had attempted to evade tax. The appellant had not complied the requirements as per Rule 32(12) of the KGST Rules 1963 and not maintained RG register as per Excise Act and the transaction has not reflected in the cash book. Therefore, I confirmed the order challenged in this appeal and the appeal stands dismissed. "

6. The petitioner/assessee, not being satisfied with the order passed

by the first appellate authority, had carried the matter before the Sales Tax Appellate Tribunal in T.A.No. 220 of 2006. The very contentions, which were advanced before the first appellate authority, were advanced even before the Tribunal also. The Tribunal, keeping in view the provisions of the Rule 32(12) of the rules has rejected the appeal. That is how the petitioner/assessee is before us in this Tax Revision.

7. For the purpose of disposal of this Sales Tax Revision, it is necessary to extract the relevant provisions of the Act. Section 29 of the Act deals with the establishment of check posts and inspection of goods in transit. Sub section (2) of Section 29 of the Act reads as under:

> *"No person shall transport within the State across or beyond the notified area any consignment of goods exceeding such quantity or value as may be prescribed by any vehicle or vessel, unless he is in possession of*
> *(a) either a bill of sale or delivery note or way bill or certificate of ownership containing such particulars as may be prescribed; and*
> *(b) a declaration in such form and containing such particulars as may be prescribed when the vehicle or vessel enters or leaves the State limits.*
> *[Explanation 1]: The term "goods" referred to in this sub section shall not include luggage of persons who cross the notified area.*
> *[Explanation 2:- For the purpose of this Act transport of goods commences at the time of delivery of goods to a carrier or*

bailee for transmission and terminates at the time when delivery is taken from such carrier or bailee]."

8. For the purpose of sub section (2) of Section 29 of the Act, the rule making authority has provided Rule 32 of the Rules. Sub rule 12 of rule 32 of the rules is relevant for the purpose of disposal of this case. Therefore, it is extracted. The same reads as under:

"(12) Every such bill or cash memorandum shall be prepared in duplicate serially machine numbered , one copy of it shall be issued to the purchaser and the other copy shall be retained by the dealer. The serial numbers assigned to the bills or cash memoranda shall run consecutively for the whole year. Where a dealer maintains separate series of bills or cash memoranda for different classes of goods, such dealer may use different series with the alphabets, A,B,C etc, prefixed to each series. The dealer shall intimate the series and the opening numbers of Bills or cash memoranda intended to be used by him in a year to the assessing authority during the month of April and the last number of the bill or cash memoranda issued shall be noted in the annual return relating to the year."

9. A reading of the aforesaid rules would clearly indicate that the person in charge of the goods vehicle or the driver shall carry along with the goods the sale bill or the cash memoranda, which shall be serially machine numbered and that one copy of such sale bill shall be issued to the purchaser and the other copy shall be retained by the dealer.

10. Having seen the relevant provisions of the Act, let us notice the

facts situation. In the instant case, the Intelligence Officer, Squad II, Palakkad had intercepted the goods vehicle on 09.07.2002. On such inspection, it was noticed that the person in charge of the goods vehicle was carrying sale invoice which was not in consonance with sub rule 12 of rule 32 of the Rules and therefore, suspected evasion of payment of tax, for the sole and simple reason that for every sale transaction, the dealer registered under the Act are liable to issue a serially machine numbered sale bill, since sub rule 12 of rule 32 of the Rules is mandatory. The reason being that each sale transaction is to be accounted in the books of accounts . In the instant case , instead of carrying a serially machine numbered sale bill, the person in charge of the goods vehicle was carrying a hand written numbered sale bill . Keeping in view the provisions of the sub rule 12 of rule 32 of the Rules, the Intelligence Officer has observed in his notice that by carrying a sale bill which is not in consonance with sub rule 12 of rule 32 of the Rules, there is an attempt to evade payment of tax under the Act. Before imposing any penalty, a show cause notice had been issued to the dealer/petitioner. In the reply to the show cause notice, except pleading that he/it was issuing such bills even in the previous occasions, no other genuine reasons were offered. In view of the above, the Intelligence authority had proceeded to levy penalty under section 29A(4) of the Act. This finding of the assessing authority is confirmed by the first appellate authority (Deputy Commissioner (Appeals)-III, Commercial Taxes, Ernakulam) as well as the Kerala Sales Tax Appellate

Tribunal. All the authorities were of the opinion that the person in charge of the goods vehicle or the driver/owner is expected to carry the sale bills as required by the provisions of section 29(2) of the Act and by the provisions of sub rule 12 of rule 32 of the Rules .

11. In view of the above discussion, in our opinion, all the authorities under the Act as well as the Tribunal are wholly justified in confirming the levy of penalty imposed by the Intelligence Officer in exercise of his powers under section 29A(4) of the Act. Therefore, no interference is called for in this Tax Revision. Accordingly, the Tax Revision requires to be rejected and it is rejected.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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